

SECTION 3

Best Practices





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3.1 Assessment

3.1.1 Court Collections May Improve with Immediate Payment of Fines

Two of Michigan's trial courts have discovered that the biggest key to improving collections can be found right in their own courtrooms.

The **Iron County Trial Court** and the **46th Circuit Trial Court** have made a change to their sentencing practices in an attempt to reduce the amount of money owed to the court by defendants. Specifically, they have adopted a policy that money is due at the time it is ordered, and have taken steps to implement the policy in their courts.

"It's really quite simple," explains Administrative Chief Judge C. Joseph Schwedler of the Iron County Trial Court. "We expect those who know they will owe money to come to the court prepared to pay. And we tell them that."

Despite the simplicity of the plan, the 46th Circuit Trial Court initially had some reservations.

"We all thought it was nuts," says Chief Judge Alton T. Davis. "We didn't think our clientele could afford it."

This concern was shared by Judge Schwedler.

"I was skeptical at first, given the type of defendant we deal with up here in the Upper Peninsula, where the economy is not flourishing like it is in other parts of the state."

Nonetheless, each court decided to try the approach on a trial basis.

The most important component of such a change is educating the local bar, probation and parole officers, and defendants that defendants should be prepared to pay fines and costs when they appear for sentencing.

Judge Davis issued an order indicating that, as of a date certain, all monies were expected to be paid at sentencing and distributed it to the local defense bar and all probation/parole officers working in the court.

"The judges were also instructed to start articulating this requirement from the bench at the time of plea-taking and sentencing."



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“From a judicial standpoint, it’s crucial that you not suggest any alternatives to immediate payment from the bench.” “If a defendant has a legitimate reason why he or she cannot pay at sentencing, they can take it up with the clerk or probation agent outside the courtroom. You don’t want other defendants who are awaiting sentencing in the courtroom to think that alternate arrangements are possible. Collections personnel should also be specifically instructed on payment schedules acceptable to the court.”

The results are impressive. In Iron County, the initial indication of the success of the program came from the clerk’s office. Says Judge Schwedler,

“Almost immediately, the clerks commented on how much more traffic there was in their office, with defendants wanting to satisfy their court debts. When you create the expectation, the money rolls in.”

In the case of Judge Davis’ court, the program was first implemented in the 87th District Court with Judge Patricia A. Morse. Says Judge Davis,

“Surprisingly, compliance was immediate and pretty seamless. We hit about 85 percent immediately.” The experience in the district court held true in all of the court’s other divisions, as well.

The fundamental benefit of such an approach, according to Judge Schwedler, is that the court sends the clear message that its orders are to be complied with.

“If you give people the opportunity to postpone compliance with the court’s order, most of them will. Not to mention the fact that you lessen the clerks’ workload - instead of processing many payments from each defendant, you only have to deal with one.”

Judge Davis cites additional benefits from his court’s experience.

“Cash flow has improved substantially and the amount of time spent on post-conviction collection activities is decreasing.”

Both courts have decided to continue the approach indefinitely.



To other courts who might consider adopting this policy, Judge Davis offers some advice.

“I think the only real challenge is for the bench to agree on an approach and then implement it uniformly and without apparent exception. It does produce results.”

Rudi Edel, 46th Circuit Trial Court Administrator sums it up this way:

“It’s a no-brainer. Now that we’ve implemented it, we can’t believe we didn’t do it earlier.”

3.1.2 Assessing Penalties Without Probation

Often, defendants who are ordered to pay financial penalties are placed on probation so that probation staff can monitor their payment. In addition, probation is sometimes viewed as an enhanced tool to ensure payment. However, courts can make better use of their staff resources by reviewing these two practices.

Probation officers generally find themselves challenged to manage their caseload. Defendants who are sentenced to probation only as a tool for monitoring payment require probation officers to allocate time away from other probationers who have more intensive probation conditions. Payment monitoring functions can be performed by non-probation staff, and can be facilitated by automated noticing functions built into many information systems already available to clerks. Rather than burden probation officers with another case, it is preferable to utilize other staff and automated processes to monitor payments for those defendants who require it.

In addition to its monitoring function, probation is often used as leverage to enforce financial penalties: the threat of probation revocation serves as a “hammer.” In reality, revoking probation simply for non-payment of penalties is rare. In those instances when a court is willing to jail the defendant for non-payment, it can order a non-probation defendant to show cause why it has not paid; the court still has effective tools at its disposal, even though the defendant is not under the jurisdiction of the probation department.

A preferred approach is to order a defendant to pay by a date certain, without sentencing him or her to probation, where financial penalties are the only sanction the court wishes to impose. If the defendant can only meet the obligation by making monthly payments, those can just as easily be handled by clerks as they can by probation officers. Monitoring can be performed by non-probation staff, and if the defendant fails to comply with the court’s order, he or she can be brought before the court to show cause. This approach retains the court’s authority, but reallocates court staff resources in a more efficient manner.



3.2 Collections Administration

3.2.1 Low Credit Card Transaction Fees

The **46th Circuit Trial Court** has found a way to meet the public demand to pay court debts by credit card, while minimizing the cost of transaction fees to the court. The court has joined the Michigan Retailer's Association and taken advantage of the benefits of membership, which include a lower transaction fee structure than the court was able to find through traditional venues. For more information, contact Rudi Edel, Trial Court Administrator at (517)732-3437, ext. 15 or John Mayleben of the Michigan Retailers Association at (800)366-3699.

3.2.2 Third Party Credit Card Acceptor

More and more, court users are requesting to pay using their credit cards. In addition, by making credit card payment available, courts are able to eliminate one more reason why a defendant cannot pay at the time of sentencing. The **64-A District Court** in Ionia utilizes a third party service for credit card payments, which eliminates the need to process credit card transactions themselves, as well as deal with the question of how to pay for the transaction fee.

The court refers interested clients to a service offered by Government Payment Services (GPS). The client can call GPS, who will charge their credit card for the amount desired, plus a service charge. Once the charge has been authorized, GPS faxes the court a message indicating that it will pay the court the amount of the assessment. The court receives its money, GPS retains its service charge, and the client has satisfied his or her obligation to the court. The court has never had a problem receiving payment from GPS.

For more information, contact Government Payment Services 1-888-561-7888.

3.2.3 Automated Phone System to Accept Credit Card Payments

The **68th District Court** has signed on with Official Payments, Inc. to accept payments through an automated phone system. Those owing money to the court can access the balance of their outstanding cases and choose to pay by Mastercard, Visa, or American Express. An additional convenience charge is added to the bill: \$2.95 for debts less than \$50.00 and \$6.95 for debts of \$50.00 or more. In the first ten weeks of the program, approximately \$10,000 was collected through the system, an amount which is expected to increase as court users become more familiar with the availability of the system.

Official Payments, Inc. provides the necessary equipment and installation. The court is responsible for installing the necessary phone lines.



The credit card payments, plus the convenience fee, are deposited directly with the court. Each day, the court receives a report by way of email indicating those cases which have been paid and updates its case management system. The court remits the convenience fees monthly to Official Payments, Inc. and retains the fine and cost revenue.

Courts interested in this service may contact Rob Gifford with the 68th District Court at (810)766-8996 or Brock Stratton of Official Payments, Inc. at (800)487-4567.

3.2.4 Refunding Overpayments

Occasionally, defendants inadvertently pay more than they owe the court. The effort required to refund overpayments can be costly to the court, and in some cases can even exceed the value of the refund. To avoid the burden of refunding small amounts, courts may choose to automatically refund overpayments exceeding \$10.00. Smaller amounts must be refunded upon request, but need not be automatically refunded when detected by court staff.

3.2.5 Accept Civil Infraction Payments on Defendant's Copy

District courts often have people coming to the counter wanting to pay their civil infraction fines and costs for tickets which the court has not yet even received. Perhaps the law enforcement agency has not yet delivered it to the court, or a driver just received the ticket and is eager to pay their fines and costs. This situation presents a problem for court staff: how can the court accept payment on a case that hasn't even been "filed" with the court yet?

In the vast majority of cases, the ticket will arrive at the court in the next day or so. Rather than inconvenience the customer by requiring them to return to the court later, the court should accept payment on the defendant's copy of the ticket.

It is possible that the law enforcement copy of the ticket will never arrive at the court. When this happens, there are several approaches for the court to take. Ideally, the court will identify those cases which are not received within 3 days (as required by MCL 257.728a) and refund the amounts which were accepted. Alternatively, the court may receipt the money and hold it in trust until the law enforcement copy is received. The "Cash / Case-Party-Bond Mismatched Report" in the JIS system can be used to identify tickets which have not been received but for which money is still being held. At the very least, the court must refund the money to the defendant if requested.

3.2.6 Adjust Amounts Owed for Jail or Community Service

Defendants are often given the choice between paying financial penalties or serving time,



either in jail or performing community service. This choice may be provided as part of the original sentence or as an amendment, especially if the defendant claims an inability to pay.

To keep court financial records accurate, court staff must have a system in place to offset amounts owed for jail or community service time served. Unless outstanding financial obligations are adjusted accordingly, court records will reflect an unrealistically high amount of receivables.

For example, a defendant may be sentenced to 10 days in jail or a \$500 fine. If the defendant elects to serve the jail time, court staff should adjust the assessment by negatively assessing the appropriate amount in the court's information system. Consult your chief judge for the appropriate rate at which to credit jail or community service. (See MCL 257.908(5), MCL 600.8729(5), and MCL 600.8829(5) for statutory provisions for offsetting financial penalties with jail time.)

3.3 Information Systems

3.3.1 Batch Show Cause Notices

Some case management systems, including Judicial Information Services and Judicial Management Systems, have developed a batch process that allows courts to select criteria from which the district court software produces show cause notices. The selection criteria allows the court to choose date ranges of violations, or alphabetical ranges of defendant's names, or other criteria so that the court can have a manageable show cause process. The *46th District Court* in Southfield was the pilot court for this feature of the JIS program, which has since been distributed to all JIS district court users. Use of the batch process is voluntary.

3.3.2 Collections Module for Automation System

The **8th District Court** commissioned the development of a software module to monitor payments and generate billing statements and late notices. Designed by DMC Consulting, the module is compatible with the court's JIS case management system. The module does not interfere with the case management system; it reads information from it and reports back to it.

The system allows users to query the data by a number of parameters. For example: staff can specify dates, minimum amounts, or a maximum number of cases. Staff are able to generate the messages which will be sent out, and the system is able to accommodate up to 99 different scenarios.

One of the primary benefits of the software is that it consolidates multiple debts from different cases involving the same defendant into a single account. This enables court staff



to have a global view of an individual's financial obligations without having to search several case files. Payment priorities can be established between debts; if a defendant is current on payment of the highest priority debts, the system will not generate late notices for the unpaid, lower priority debts.

The 8th District Court has made the software available to other courts in the state for a fee of \$3,000. Currently, approximately five other courts are using the system. For more information, contact Cheryl Stewart at (616)329-4590.

3.3.3 Department of Corrections Probation Officers Access Court Information

The **10th Circuit Court** in Saginaw County has improved interagency cooperation by providing Department of Corrections probation staff access to the court's case information management system, which includes data on financial penalties assessed and paid. Probation officers are able to monitor payment as part of their probation oversight. In addition, officers enter updated personal and address information directly into the court's system. For further information, contact Dave Cable at (517)790-5470.

(The 10th Circuit Court has also had success receiving periodic payments from prisoner accounts to satisfy court debts. Contact Dave Cable for more information.)

3.4 Enforcement

3.4.1 Reimbursement Division: A Model for Interagency Cooperation

Improving court collections can be a difficult task. Courts face a number of challenges unique to their situation. Among them is the fact that, unlike private sector entities, courts do not choose their customers. Businesses have a greater ability to decide whether to grant credit to their customers than courts do. In addition, those who select themselves into the court's customer population are likely to be less financially affluent than the population as a whole, and therefore less able to pay significant fines and costs.

Circuit courts face the additional hurdle of a system that is decentralized. Courts process cases, county clerks manage files, and Department of Corrections staff supervise probationers. Managing a coordinated collections effort among the various players at the circuit court level is challenging; bringing about change is even more difficult.

The situation is even more complicated in some counties, such as Oakland County, where there exists another autonomous entity, the county executive. Yet the **6th Circuit Court** and Oakland County have found a mechanism for increasing coordination and maximizing collections success: the creation of a staff dedicated to collections - the Reimbursement Division.



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The Oakland County Reimbursement Division is not new. Created over 25 years ago as an agency of the County Executive, it has survived changing administrations, chief judges, county clerks, and probation staff to operate consistently to serve the court and county. Its endurance demonstrates that it is not simply an artifact of complimentary personalities, but rather a successful systematic solution to a problem that affects the court and county.

The Reimbursement Division has a significant presence in the Oakland County Courthouse in Pontiac. Located in close proximity to the courtrooms, the Reimbursement Division uses notices posted throughout the facility to notify individuals to report to their office for financial matters.

The division is responsible for assisting the court in ascertaining individuals' ability to pay court assessments. This process is designed to help the court assess appropriate amounts that the defendants will be able to pay, thus not creating unrealistic expectations and an inaccurate picture of amounts owed to the court.

The court requires all clients to submit financial information, upon which payment plans are based. Division staff interview clients and use a Microsoft Access database to collect financial information. Among the information collected is: name, address, phone, social security number, driver's license number, employer address and phone, personal references, spouse's name, number of children, bond information, vehicle information, real estate owned and amount owed, mortgage company, bank account information, other assets, family income, and monthly expenses. If a client does not submit financial information, the Reimbursement Division will create a payment schedule. Clients are required to sign agreements in which they commit to the terms of the payment plan. Payment schedules are communicated to DOC staff for cases assigned to probation.

The Reimbursement Division is also responsible for billing, payment processing, and enforcement. Monthly bills are generated and sent to clients. Clients are encouraged to execute a voluntary wage assignment as the easiest way to pay their debt. If payment is not received, the client will receive up to two late notices before the division issues an administrative show cause notice or other appropriate action. Possible enforcement actions include garnishing wages, tax refunds, or bank accounts.

In addition to circuit court criminal cases, the division also provides the same services to the Family Division of Circuit Court and to the Oakland County Probate Court, as well as billing county jail inmates for costs of incarceration.

For more information, contact Linda Spiekerman-Harvey of the Oakland County Reimbursement Division at (248)858-0506.



3.4.2 Collections Division

The **12th District Court** employs five full-time collections officers and a clerk in its internal Collections Division. The program began in 1991 with the hiring of a single collections officer, and was expanded after the court demonstrated that the additional revenue generated exceeded the cost of the officer. Defendants contact the division themselves or are referred by court staff. The division handles misdemeanor and civil infraction collections, as well as some collections for the Family Division of Jackson County's circuit court.

Collections Division staff monitor payments and establish installment arrangements when appropriate. Delinquent payments result in telephone and personal contact with the defendant. Cases which remain unpaid result in bench warrants and are referred to contracted staff (referred to as "External Collections") who are deputized as court officers and who arrest defendants on bench warrants.

When brought in on a bench warrant for failure to pay, the judges will order them to jail unless they pay immediately. In this situation, court staff immediately waive the assessment; any amount paid is reassessed. This procedure avoids the need to periodically review records to determine which assessments need to be removed because the defendant served jail time in lieu of payment.

For more information, contact Michael Dillon, Court Administrator at (517)788-4260.

3.4.3 Voluntary Wage Assignment

The **64-A District Court** encourages defendants to agree to an income withholding process by completing a court-developed form which is signed by the defendant and sent to the employer. Employers forward money bi-weekly or monthly to the court. If a defendant changes employment the court requests a new income withholding agreement. The program has been in effect approximately 6 years, and about 40% of defendants agree to the process.

See the Sample Forms in Appendix A6 for an example of a voluntary income withholding order form used by the Oakland County Circuit Court.

3.4.4 Warrant Team

The **24th District Court** has established a team of two officers who execute warrants issued for failure to appear or failure to pay court debts. The officers are supported by a clerk who compiles the warrants and identifies the residents of the defendants utilizing a computer-generated map. The clerk also handles all calls by defendants who inquire about outstanding warrants.



The officers are also responsible for transporting prisoners for the court's two funding units, Melvindale and Allen Park.

The program has been even more successful than was initially envisioned. In the first three years of the program, the team has collected over four times more in fines and costs than it has cost the court; average amount collected per case is approximately \$225. In addition, it has been able to transport over 350 prisoners for the cities it serves.

For more information, contact Jill Hilliker, Court Administrator, at (313)928-0535.

3.4.5 Apply Full Amount of Bond

When a defendant absconds on a ten percent bond, some courts simply forfeit the ten percent. The preferred practice is to enter a judgment for the full amount of the bond, as allowed by court rule. (See MCR 6.106(l)(2)(c).)

3.4.6 Locating Defendants

The **55th District Court** in Mason has utilized the services of an internet-based firm which specializes in locating individuals to track down defendants who owe the court money. The court has used this tool on a trial basis, and has found significant success in doing so.

There are several businesses who maintain large databases of records which include information on individuals, their addresses and phone numbers, aliases, and other personal information. These databases, as well as other data sources which are publicly available, can be queried to track an individual who owes the court money, identifying former and current addresses and phone numbers. Firms in this industry may charge for their services with a flat fee, a per-use charge, or a combination of the two.

The 55th District Court has located several defendants, both within Michigan and in other states. Because the service has a cost to it, the court has chosen to use it only for its most difficult (and often, oldest) cases which remain outstanding. The court has had particular success with cases which are over 5 years old. In one case, the court was able to determine that the defendant in an 11-year-old case, who had been living in Florida, had since moved back to Lansing. Because of the fresh address information, local law enforcement arrested him and brought him back before the court. This tool has also helped the court identify amounts which are unlikely to be collected, such as debts owed by defendants who have since died or who are incarcerated in other states.

For more information, contact Lisa Bailey at (517)676-8426.



3.4.7 Use of Show Cause Notices

The **65th District Court** has found great success with implementing a routine show cause process. Initially targeting traffic cases from past years, the statistics indicated that cases that were more than three years old were not cost-effective to pursue. Twice per month, hearings were scheduled before the magistrate. Those who appeared and were not able to pay entered into a payment plan, with a show cause hearing before the judge scheduled for the date of the last payment. The magistrate reports that approximately 5 in 100 defendants actually required the hearing before the magistrate.

During a six month period during which statistics were kept, 57 percent of defendants appeared prior to the hearing and paid their debts. Bench warrants for failure to appear were issued in most of the remaining cases, resulting in payment (or arrest and payment) of another 11 percent of cases within the six month period studied. Payments on these 68 percent of cases amounted to approximately \$81,000 over the six month period.

The program cleared up the backlog, allowing the court to collect over \$180,000 and close 82 percent of its old cases. The program continues on an ongoing basis, dealing with current year delinquent accounts.

For more information, contact Tony Hufnagel at (517)224-5150.